BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of Section 273(d)(5)	)	
of the Communications Act of 1934	)	GC Docket No. 96-42
as amended by the Telecommunications	)	
Act of 1996 -- Dispute Resolution	)	
Regarding Equipment Standards	)	

REPLY COMMENTS OF CORNING INCORPORATED

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SUMMARY

In its reply to initial comments, Corning continues to urge the Commission to adopt the consensus-based, ANSI-style dispute resolution process described in Attachment A to Corning's March 21 comments as the "default" procedure for use in resolving standards-related disputes arising under Section 271(d)(4) of the Communications Act, in lieu of a binding arbitration procedure of the sort described in the Commission's notice. All parties agree that for a variety of reasons, as described in Corning's initial comments, binding arbitration as proposed by the Commission in its NPRM is ill-suited to the resolution of technical disputes that may arise in the formulation of industry-wide standards or generic requirements by non-accredited standards development organizations ("NASDOs").

The criticisms leveled against Corning's proposed ADR procedure by Bellcore and its carrier-owners reflect a fundamental misunderstanding as to the nature and effect of the Corning proposal. Corning's proposed "accelerated consensus" procedure is not intended to reduce or eliminate the ability of any carrier to resolve critical technical issues in a timely and efficient manner. On the contrary, the proposed "default" procedure is merely designed to ensure that carriers receive accurate and complete information upon which to base their procurement decisions.

Corning's proposed procedure does not give any one party a "veto" over the issuance of generic requirements by Bellcore or other NASDOs. Nor would it allow one party to

"force" other parties to use the Commission-prescribed "default" procedure to resolve their disputes with a NASDO. Concerns raised with respect to the ability of ANSI-accredited standards development organizations to resolve disputes under Corning's proposed ADR procedure in an efficient, unbiased and timely manner are similarly misplaced.

In its reply, Corning also addresses comments made by Bellcore in its initial submission which suggest that funding requirements may be employed in a manner inconsistent with the purposes and provisions of Section 273(d)(4), which explicitly directs that industry-wide standards and generic requirements are to be developed by a NASDO "in such a manner as not to unreasonably exclude any interested industry party." Corning urges the Commission to make it clear that funding requirements may not be used as an exclusionary device, which effectively prevents vendors from participating in the NASDO's activities or utilizing the Commission-prescribed "default" procedure to resolve disputes arising from such activities.

With regard to Bellcore's ADR proposal, Corning believes that given the complexity of the proposal, the potential cost to parties seeking to invoke the ADR process, as well as the proposal's ultimate reliance on a majority vote of the "funding parties" to resolve all disputes, vendors will not as a practical matter be willing or able to use it. While Corning is willing to discuss ways in which its concerns might be addressed, in its present form, Bellcore's proposal fails to satisfy either the literal terms or the underlying intent of the statute.

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REPLY COMMENTS OF CORNING INCORPORATED

Corning Incorporated ("Corning"), by its attorneys, submits the following reply to initial comments submitted in response to the Notice of Proposed Rulemaking ("NPRM") adopted by the Commission in the above-captioned proceeding.[1]

I. INTRODUCTION

In its initial comments, Corning urged the Commission to adopt the consensus-based, ANSI-style dispute resolution process described in Attachment A to Corning's comments as the "default" procedure for use in resolving standards-related disputes arising under Section 271(d)(4) of the Communications Act, in lieu of a binding arbitration procedure of the sort described in the Commission's notice. While other commenting

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[1] Notice of Proposed Rulemaking, GC Docket No. 96-42, In the Matter of Implementation of Section 273(d)(5) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 -- Dispute Resolution Regarding Equipment Standards, FCC 96-87, released March 5, 1996, 61 Fed. Reg. 9966 (March 12, 1996).

parties have expressed differing views on the specific alternate dispute resolution procedure to be adopted by the Commission, Corning is pleased that there appears to be agreement among the parties on several important issues.

As an initial matter, all parties agree that binding arbitration as proposed by the Commission in its NPRM is ill-suited to the resolution of technical disputes that may arise in the formulation of industry-wide standards or industry-wide generic requirements by non-accredited standards development organizations ("NASDOs").[2] In addition, the comments reflect general agreement that the Commission's proposal is ill-advised in these circumstances due to the technical complexity of disputes arising under Section 271(d)(4), as well as the difficulty of securing an arbitrator that is both knowledgeable and disinterested, and in light of the potential impact of the arbitrator's decision on interested parties other than the immediate disputants. Finally, all parties appear to agree that the process of establishing and implementing standards and generic requirements is voluntary in nature and works best if the parties involved are able to agree on a satisfactory means to resolve their disputes in a conciliatory fashion, without resort to the Commission-prescribed alternate dispute resolution procedure.

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[2] See Bellcore Comments at 17; TIA Comments at 2; BellSouth Comments at 2; U S West Comments at 2; Bell Atlantic Comments at 2.

Despite these agreements in principle, there remain some significant differences of view reflected in the initial round of comments. Many of these differences relate to the relative merits of the Corning proposal and the alternative proposals offered by other commenting parties, in particular the proposed ADR procedures advanced by Bell Communications Research, Inc. ("Bellcore"). Accordingly, Corning's reply comments will focus on the following areas:

(1) Corning's response to the criticisms offered by commenting parties with respect to the Corning proposal;

(2) the matter of eligibility for the Commission-prescribed alternate dispute resolution process to be established pursuant to Section 273(d)(5), i.e., the "funding parties" issue; and

(3) an evaluation of the alternate dispute resolution procedures proposed by Bellcore in its initial comments.

II. CRITICISMS OF CORNING'S PROPOSAL

TIA, the only accredited standards development organization ("SDO") filing comments, has indicated its general support for the proposed ANSI-style "default" procedure described in Corning's initial comments.[3] However, Bellcore and several of its carrier-owners have expressed objection to certain aspects of Corning's proposal in their initial comments. In this section of its reply, Corning attempts to classify and respond to each of the criticisms leveled against its proposal.

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[3] See TIA Comments at 3.

One criticism advanced by parties opposing the Corning proposal is that the proposed "accelerated consensus" procedure allegedly may often fail to lead to resolution of key technical issues[4] or to a "final decision"[5] on a particular dispute. These assertions reflect a fundamental misunderstanding as to the nature and effect of Corning's proposed "default" ADR procedure. A review of the Corning proposal makes it clear that the proposed procedure, if pursued to its logical conclusion, will result in a resolution of both the immediate dispute and the underlying technical issue in every case.

The first potential outcome under Corning's proposed ADR procedure is that the Bellcore proposal on a particular disputed attribute is approved by the accredited SDO. In this situation, the particular disputed attribute is included in Bellcore's final industry-wide generic requirement,[6] and both the technical issue and the dispute are resolved.

Under the second possible outcome, Bellcore's proposal for a particular disputed attribute is not approved by the SDO. In this situation, Bellcore cannot include "its opinion" concerning the particular disputed attribute in the industry-wide generic requirement,[7] but still can proceed in rendering its

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4 See Bellcore Comments at ii, 4.

5 BellSouth Comments at 4.

6 See Corning Comments, Attachment A, Section 4.1.2.

7 Id., Section 4.2.1.

opinion about that attribute, as long as it clearly states that Bellcore's opinion has been reviewed by the relevant SDO and has not been approved by the industry. In this case, the dispute which prompted use of the Commission-prescribed ADR procedure is resolved and Bellcore's opinion remains just that -- Bellcore's opinion. It does not become part of an industry-wide generic requirement. Nor does this outcome prevent resolution of the underlying technical issue. Each of the affected carriers remains free to decide what it wants to do with respect to a particular disputed attribute. The carrier can adopt Bellcore's proposal or develop an alternative on its own, through another SDO, or in cooperation with vendors. Both the issue and the dispute are resolved, although in a fashion that differs from Bellcore's past practice.[8]

A second area of criticism involves assertions that the Corning proposal would "effectively disenfranchise or dilute the ability of funders . . . to help resolve a matter which is vital to their services and operations,"[9] by referring matters to an

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[8] In the past, Bellcore has published generic requirements which reflect its views without differentiating between those attributes which were supported broadly by the industry and those that were the subject of ongoing controversy. As a result, the carrier-user could not readily discern which views were supported by the industry and which were strictly Bellcore's opinion. Under Corning's proposal, generic requirements would truly reflect industry-wide agreement, and issues not supported by industry would be clearly identified for the benefit of carriers and vendors alike.

[9] Bellcore Comments at ii, 4.

SDO with a "different membership."[10] These assertions also rest on a misunderstanding of the Corning proposal.

Corning's proposed alternate dispute resolution procedure is not intended to dilute or eliminate the ability of any carrier to resolve critical technical issues in a timely and efficient manner. On the contrary, the proposal "default" procedure is designed to ensure that the affected carriers receive accurate and complete information upon which to base their decisions. If the SDO does not support Bellcore's opinion on a particular disputed attribute, the funding carriers are made aware of this fact, and Bellcore will not be able to portray its opinion as a "industry-wide" generic requirement. The carrier is then free to make an informed decision to accept Bellcore's views on a particular disputed attribute, develop its own alternative, or work with vendors and/or other SDOs to find a better solution.

In this regard, Corning's proposal for referral of disputes to an accredited SDO represents an attempt to ensure that all parties to a NASDO's standards or generic requirements activities have the opportunity, if they so choose, to have unresolved disputes arising under Section 273(d)(4) addressed and resolved in a forum which is required by ANSI to be open, balanced, and not dominated by any one party or interest group.[11]

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10 See Bell Atlantic Comments at 2.

11 See American National Standards Institute, Procedures for the Development and Coordination of American National Standards, approved March 22, 1995, p.1, Sections 1.2.1 and 1.2.2.

Corning's proposal is not designed to exclude carriers or any other interest group from participating in the resolution of disputes, except in instances where there is a clear conflict of interest, e.g., where a party holds a significant (i.e., greater than 10 percent) equity interest in one of the disputants. Absent such a conflict, the proposed procedure allows any party which satisfies the SDO's ANSI-approved eligibility criteria to serve on the engineering committees and subcommittees which may be called upon to resolve standards-related disputes arising under Section 273(d)(4).[12]

Yet another criticism offered against Corning's proposal is that it limits dispute resolution activities to a "product-directed" standards body and thereby forecloses other expert bodies like the ANSI-accredited T1 Committee from serving in this capacity.[13] This criticism is also misplaced. Section 273(d)(4) deals with the establishment by NASDOs of "industry-wide" standards or industry-wide generic requirements for "telecommunications equipment or customer premise equipment." Similarly, the literal terms of Section 273(d)(5) of the Communications Act limit the use of the alternative dispute resolution process to disputes over standards and generic

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12 In the case of TIA, a review of TIA's Standards and Technology Annual Report for 1995 indicates that all of the other parties that commented on the NPRM (i.e., Bellcore, Bell Atlantic, BellSouth, and U S West) are already active participants in TIA standards activities. See 1995 TIA Standards and Technology Annual Report at 38-41.

13 See Bellcore Comments at ii, 4, 19.

requirements for equipment (i.e., products). Corning's proposal merely tracks the language used in the statute. To the extent that any accredited SDO has assumed responsibility for formulating standards with respect to telecommunications equipment or customer premises equipment, disputes under the Corning proposal could be referred to that SDO. Corning believes that implementation of its proposal potentially could result in referral of disputes to EIA, TIA, T1, and ATIS, as well as other ANSI-accredited groups.

Comments submitted by Bellcore and others further suggest that Corning's proposal is flawed because the relevant SDO committee will not be able to reach a decision within the 30-day statutory deadline.[14] Corning continues to believe that since the SDO will decide only whether or not a consensus exists to support a specific NASDO proposal, the decision can easily be made in 30 days.[15] The Corning proposal focuses the decision on this one issue -- the presence or absence of a consensus to support the NASDO proposal -- in order to meet the 30-day deadline. Clearly, Corning's proposed "accelerated consensus" procedure is at least as likely to result in a decision in 30 days as proposals advanced by other commentors which do not focus the decision in this manner.

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[14] See Bellcore Comments at ii, 19; Bell Atlantic Comments at 2.

[15] The only ANSI-accredited SDO that submitted comments, TIA has indicated that it believes the process proposed by Corning provides a workable basis for the resolution of disputes, consistent with the statutory deadline.

The further assertion that Corning's proposed "default" procedure gives any one party a "de facto veto over requirements which are in fact acceptable to a majority of the funders"[16] is based on a distorted and inaccurate reading of the proposal. This is neither the intention nor the effect of Corning's proposal. Disagreeing parties ("DPs") are not even permitted to vote under Corning's proposal, and clearly cannot unilaterally "veto" the issuance of a proposed NASDO standard or generic requirement. In any event, Bellcore can render its opinion on a particular attribute at any time.[17]

It is true that under the Corning proposal a dissenting party can opt to utilize the Commission-prescribed ADR process, in lieu of the dispute settlement process agreed to by the other participants. As Bellcore acknowledges in its comments, this is an express requirement of the statute.[18] In this regard, Section 273(d)(4) specifically requires the NASDO to "attempt . . . to agree with the funding parties as a group on a mutually satisfactory dispute resolution process which such parties shall utilize as their sole recourse," and further

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16 Bellcore Comments at 9.

17 Corning's proposal does, however, require Bellcore to fully disclose the facts in a situation where its opinion on a particular attribute is disputed. In disputed situations where Bellcore is unable to get an SDO to support its position, it will not be allowed to portray its view as an industry-wide generic requirement and must reveal the fact that the industry does not support its views, in the interest of full disclosure.

18 See Bellcore Comments at 11-12.

provides that if no dispute resolution process is agreed to by all the parties, a single party may invoke the "default" procedure established by the FCC, pursuant to Section 273(d)(5), to resolve its dispute with a NASDO.[19] The statute was specifically structured in this way to give minority interests an opportunity to be heard. In short, it was designed to protect the minority from the tyranny of the majority.

Bellcore is incorrect, however, in suggesting that the statute enables one disagreeing party to "force" all other participants to utilize the "default" procedure to resolve their disputes with the NASDO. The other parties remain free to employ any other dispute resolution process which they may agree to use, as a group or pursuant to individual agreements with the NASDO, and forego the Commission prescribed "default" procedure.

A final criticism advanced in the comments asserts that the Corning proposal is flawed because an SDO is "no more or less neutral than other bodies."[20] Obviously, even if this statement were true, it should not cause the Commission to view the Corning proposal as inferior to other approaches. However, the rigorous standards of openness, balance and lack of domination that must be met in order for an SDO to secure ANSI accreditation plainly serve to distinguish such organizations from "other bodies" that are not so constrained. Indeed, ANSI-accreditation was

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[19] See 47 U.S.C. § 274(d)(4)(v).

[20] Bellcore Comments at ii; also see BellSouth at 3-4.

established for the express purpose of ensuring openness and nondiscrimination in standards decision-making. ANSI certifies the procedures of organizations to maintain the integrity of their standards-development processes, and accredited organizations must undergo periodic ANSI audits. Clearly, ANSI accreditation says a lot about the openness, neutrality, and integrity of the organization which maintains the accreditation.

III. "FUNDING PARTIES" ISSUE

The "eligibility" of particular entities to invoke the Commission-prescribed ADR process has been addressed at least indirectly in the initial comments of several parties. The comments submitted by Bellcore and its carrier-owners repeatedly assert that the ADR process is to be used solely by "funding parties." For example, in its comments, Bellcore pointedly asserts that "Congress recognized that only funding parties were the entities whose technical disputes with an issuing entity were to be the subject of the dispute resolution process referred to in Section 273(d)" (emphasis in original) and later observes that "Commission-established [alternate dispute resolution] procedures are to be available only to a 'funding party.'" (Emphasis added)[21]

While Sections 273(d)(4) and (d)(5) do refer to "funding parties," the clear intent of the statute is not to limit access to the open, nondiscriminatory procedures and

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[21] Bellcore Comments at 7, 9.

dispute settlement processes provided in these sections to RBOCs and other carriers that have traditionally underwritten the direct costs of having Bellcore engage in the development of standards or generic requirements for their use in procuring equipment designed to meet the carriers' needs and desires. Rather, the notion of "funding parties" was included in the statute only to provide a basis for determining the legitimacy of parties interested in participating in NASDO processes for the establishment of industry-wide standards and industry-wide generic requirements.[22]

Traditionally, the direct costs of Bellcore's generic requirements activities have been borne by the affected carriers, which reap immediate, direct, and substantial benefits from the end product of such activities, i.e., generic requirements documents which are available for use in the carrier's equipment procurement process. In contrast, vendor contributions to the generic requirements process, while significant, typically have taken the form of "in-kind" contributions, i.e., technical presentations and related information, prepared at considerable expense to the vendor, together with contributions of technical personnel and related resources designed to assist Bellcore in its GR development efforts.[23]

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22 See TIA Comments at 3-4.

23 It should also be noted that while funding carriers reap immediate rewards from Bellcore's development of generic requirements, any return which a vendor may receive from its participation in the Bellcore process is inherently speculative and dependent on the final outcome of the

To the extent that a NASDO may seek to employ a different approach in funding its standards-related activities in the future, Corning urges the Commission to make it clear that such arrangements may not be used as a device to evade the express terms and clear intent of Section 273(d)(4), which specifically states that a NASDO's industry-wide standards and generic requirements activities should be "administered in such a manner as not to unreasonably exclude any interested industry party." This notion that funding arrangements may not be employed to prevent vendors from invoking the Commission-prescribed dispute resolution procedure is further reinforced by the Conference Report for the Telecommunications Act of 1996, which states that ". . . the overall intent of establishing a dispute resolution provision . . . is to enable all interested parties to influence the final resolution of the dispute. . . ."[24] Nowhere does the Conference Report suggest that the dispute resolution process is only to be made available to those parties that pay the NASDO's expenses for the relevant activity.

Accordingly, the Commission should reflect in its final order the Congressional intent that "all interested parties" should have a full and fair opportunity to participate in NASDO

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process and the procurement decisions made by individual carriers, once the generic requirement is released.

[24] H.R. Conf. Rep. No. 230, 104th Cong., 2d Sess. (1996) ("Conference Report") at 39. [Emphasis added]

activities and in the dispute resolution provided for in Sections 273(d)(4)-(5), and that funding of the NASDO's activities should not become a barrier to such participation.

IV. ASSESSMENT OF BELLCORE ADR PROPOSAL

A. Purpose of Sections 273(d)(4) and (5)

In evaluating Bellcore's proposed alternate dispute resolution procedures, it is important to keep in mind the underlying purpose of Section 273(d)(4) and its companion provision, Section 273(d)(5), which explicitly requires the Commission to "prescribe a dispute resolution procedure to be utilized in the event that a dispute resolution process is not agreed upon by all the parties" to an activity covered by Section 273(d)(4). As Corning has previously noted, the purpose of these provisions is to create ANSI-like procedural requirements that are to be applied to NASDOs that engage in the formulation of industry-wide standards or industry-wide generic requirements for telecommunications equipment or CPE. These procedures require NASDOs to operate in a more open and nondiscriminatory fashion than they may have in the past.

Clearly, Congress perceived a problem that needed to be addressed, otherwise Sections 274(d)(4) and (d)(5) would not have been enacted. The principal concern that these provisions are designed to address relates to the potential for a NASDO to operate in a fashion that fails to give all interested parties an opportunity to influence NASDO decisions that have industry-wide effects. The Conference Report clearly reflects this concern in

stating that "the overall intent of establishing a dispute resolution provision, as contained in new subsection 273(d)(5), is to enable all interested parties to influence the final resolution of the dispute. . ."[25]

Establishment of an appropriate alternative dispute resolution process pursuant to Section 273(d)(5) is the key to ensuring that the intended purpose of this provision and Section 274(d)(4) is fulfilled. Toward this end, it is critical that the Commission-prescribed ADR procedure give all parties with a legitimate commercial interest in a NASDO's development of "industry-wide" standards or generic requirements a meaningful opportunity to participate in such activities and, if necessary, to invoke a "default" procedure which ensures that any dispute with the NASDO can be resolved "in an open, non-discriminatory, and unbiased fashion."[26]

In the past, some NASDOs, including Bellcore, have retained the right to resolve disputes unilaterally. They have solicited comments on proposed standards or generic requirements from others, but retained the right to unilaterally reject those comments without debate or explanation. To fulfill the Congressional mandate, this sort of unilateral control by a NASDO

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25 Id.

26 47 U.S.C. § 273(d)(5).

must be mitigated. A new process must be created which is more democratic and less arbitrary.[27]

The requirements imposed in Section 274(d)(4) contemplate the use of more open, ANSI-like notice and comment procedures for securing input from interested parties on proposed industry-wide standards and generic requirements. However, in order for these requirements to have a real impact, it is crucial that there be an effective means resolving disputes in an open, non-discriminatory manner, consistent with the requirements of Section 273(d)(5). This is precisely why Corning proposed the use of SDOs to resolve disputes. Adoption of an ANSI-like, consensus-based alternate dispute resolution procedure will ensure that disagreeing parties with legitimate commercial interests in a particular "industry-wide" standard or generic requirement have a viable means of securing a fair resolution of their disputes in a timely manner.[28]

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[27] In the case of Bellcore, the need for such changes is accentuated by the prospect that Bellcore's RBOC owners themselves will be permitted to enter the manufacturing business, pursuant to the terms of Section 273(a) of the Communications Act. 47 U.S.C. § 273(a). (Under the terms of the statute, Bellcore's owners are already permitted to acquire equity interests of up to 10 percent and to enter into royalty arrangements which give them a financial stake in the products of particular manufacturers. See 47 U.S.C. § 273(b).)

[28] As the discussion above indicates, participation in an accredited SDO's standards-related activities is open to all interested parties. Moreover, SDO processes drive parties toward cooperation and away from unilateral decisions by dominant parties. As a result, the debate in these SDOs can be based on technical merit rather than the degree of political influence or legal maneuvering.

B. Bellcore's Proposed ADR Procedures

Before evaluating Bellcore's proposed alternate dispute resolution procedures, a brief review of the various options described in the proposal is in order. Attachment A uses a flow chart to describe the proposal in pictorial fashion. The narrative discussion below outlines each of the steps that would be taken, if the ADR process described in the Appendix to Bellcore's comments is taken to its logical conclusion.

Step 1: Bellcore proposes a dispute settlement process for consideration by the "funding parties." Bellcore offers two options: (1) escalation within Bellcore; or (2) non-binding mediation with settlement to be adopted by a majority of the "funding parties."[29] It is unclear in Bellcore's proposal whether the "funding parties" include all interested parties, including vendors, or just the carriers that have traditionally funded Bellcore's activities.[30] If all the funding parties agree unanimously with one of Bellcore's options, that option will become the sole recourse for the settlement of disputes by all parties. If one party disagrees, the process proceeds to Step 2.

Step 2: This can occur at the beginning of the process or at the point a party opts to use the ADR process (in which case the decision must be made in two days). At either point,

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[29] See Bellcore Comments at 20, n.16.

[30] See discussion in Section III, supra.

one of the following three options will be chosen by a majority of the funding parties:

- Option 1: resolution of the dispute by the "funding parties" themselves (with participation, but not voting, by the disagreeing party and Bellcore);
- Option 2: escalation within an issuing organization (in this case, Bellcore) "possibly coupled with ratification or rejection of the outcome by a majority of the funders"; or
- Option 3: referral of the dispute to non-binding mediation, pursuant to which a recommendation will be made which may be adopted, rejected, or modified by a majority of the "funding parties."

If there is no majority on these three options, then a tri-partite mediation/recommendation procedure (described in Step 3c) would be utilized in default.

Step 3a: If Option 1 is chosen, the dispute is resolved by a majority vote. (If no majority exists, presumably, Bellcore's disputed proposal prevails, although Bellcore's comments are not specific on this matter.)

Step 3b: If Option 2 is chosen, the issue is resolved after being escalated within Bellcore and (possibly) after a majority of the "funding parties" vote to ratify the outcome of escalation. (Presumably, a deadlocked vote would result in the adoption of Bellcore's disputed proposal, although Bellcore does not specifically address this matter in its comments.)

Step 3c: If Option 3 is chosen, the funding parties must make yet another decision by majority vote on which panel should be used to mediate the dispute. Three options are offered: (1) the funding parties themselves, absent Bellcore and

the disputing party; (2) an accredited SDO; or (3) a tri-partite expert panel comprised of one member selected by Bellcore, one member selected by the disputing party, and a third member selected by the other two panel members. The panel would render a recommendation, which can be adopted, rejected, or modified by a majority of the funding parties.

C. Evaluation of Bellcore's Proposal

Clearly, Bellcore has devoted considerable time and energy to creating a process which it believes meets the statutory requirements of Section 273(d)(5). However, Corning remains skeptical of the proposal as it has been presented. Corning is open to discussion of ways in which the concerns described below can be addressed. However, as it now stands, Corning is concerned that the Bellcore proposal will not satisfy either the literal terms or the intent of the statute. Corning's principal concerns are as follows:

First, Corning is concerned that reliance upon a majority vote for the ultimate resolution of all disputes will render the process ineffective for most vendors that participate in Bellcore's processes for formulating generic requirements. Bellcore states that the only parties that will vote are "funding parties," a term which Bellcore does not define. Even if some or all vendors are considered "funding parties" (Bellcore makes no commitments in this regard) they are likely to be in the minority

in many instances, given the seven votes controlled by Bellcore's RBOC owners.[31]

Second, Corning is concerned that the Bellcore proposal does not clearly provide a meaningful opportunity for vendors to become "funding parties" eligible to vote and participate fully in the proposed alternate dispute settlement process. As the discussion in Section III above indicates, the term "funding parties" was not included in the statute as a means to exclude vendors from the ANSI-like processes established pursuant to Sections 273(d)(4) and (d)(5). This deficiency simply must be corrected, in order to conform the proposal to the statutory terms and legislative history associated with these two new sections of the Communications Act.

Third, Corning believes that the Bellcore proposal is too complex and that the "flexibility" which it purports to offer is more illusion than reality. Corning fears that the complexity of the proposal alone will delay decision-making and discourage vendors from pursuing legitimate differences of view with Bellcore. In addition to the delay, this complexity creates uncertainty about how the dispute will be managed. Of course, the complexity of Bellcore's proposed ADR procedures should not obscure the fact that <u>all</u> disputes in the end will be resolved by

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[31] In disputes in which Corning may be involved, Bellcore's carrier owners would in all likelihood constitute a majority, given the limited number of manufacturers of fiber optic equipment operating in the United States.

a majority vote. In this regard, Bellcore's proposal is in reality a "'one-size-fits-all' solution."[32]

Finally, Corning believes that vendors are unlikely to use the ADR process proposed by Bellcore because they would be required to incur too much risk and much of the cost associated with pursuing a dispute. For example, if a tri-partite mediation/recommendation process is chosen by a majority of the funding parties, the vendor presumptively would have to incur all the cost associated with that process, including paying all the panel participants.[33] After incurring all this expense, a vendor would still be subject to the risk that the decision of the tri-partite panel would be overturned by a simple majority vote of the "funding parties." This is clearly an unacceptable risk from a vendor's perspective.

In short, Corning is concerned that given the manner in which the Bellcore ADR process is currently structured, vendors will not as a practical matter be willing or able to use it. As a result, the requirements and purposes of the statute simply will not be fulfilled.

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[32] See Bellcore Comments at 19.

[33] Id. at Appendix, p. 2.